



**KENAI PENINSULA BOROUGH PLANNING COMMISSION  
RESOLUTION 2023-08  
HOMER RECORDING DISTRICT**

**A resolution granting approval of a conditional land use permit to operate a sand, gravel, or material site for a parcel T 3S R 14W SEC 4 SEWARD MERIDIAN HM 2006036 HOFFMAN ACRES LOWELL FIELD PHASE 1 LOT 1, 2, 3, 4, Homer Recording District., Third Judicial District, State of Alaska.**

- WHEREAS,** KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS,** KPB 21.29 provides that a conditional land use permit is required for material extraction which disturbs more than 2.5 cumulative acres; and
- WHEREAS,** on March 6, 2023 the applicant, Richard Gregoire, submitted to the Borough Planning Department a conditional land use permit application for a portion of KPB Parcels 159-360-09, 10, 11, 12, which is located within the rural district; and
- WHEREAS,** public notice of the application was mailed on or before May 4, 2023 to the 123 landowners or leaseholders within ½ mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS,** public notice was sent to the postmaster in the Happy Valley area requesting that it be posted at the local Post Office; and
- WHEREAS,** public notice of the application was published in the March 30, 2023 and April 6, 2023 issues of the Clarion News; and
- WHEREAS,** a public hearing was held at the April 10, 2023 meeting of the Kenai Peninsula Borough Planning Commission; and
- WHEREAS,** during the public hearing, planning staff requested a postponement until the applicant could obtain an Obstruction Evaluation and/or Airport Airspace Analysis form the FAA; and
- WHEREAS,** on April 28, 2023 the applicant Richard Gregoire, submitted to the Borough Planning Department a Determination of No Hazard from the FAA for the proposed 6-foot-high earthen berms; and
- WHEREAS,** public notice of the application was mailed on or before May 4, 2023 to the 123 landowners or leaseholders within ½ mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS,** public notice was sent to the postmaster in the Happy Valley area requesting that it be posted at the local Post Office; and
- WHEREAS,** public notice of the application was published in the May 11, 2023 and May 18, 2023 issues of the Homer News; and
- WHEREAS,** a public hearing was held at the May 22, 2023 meeting of the Kenai Peninsula Borough Planning Commission;

**NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

**FINDINGS OF FACT**

1. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
3. On March 6, 2023 the applicant, Richard Gregoire, submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 159-360-09, 10, 11, 12, which is located within the rural district
4. KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres or processes material.
5. The proposed cumulative disturbed area within the parcel is approximately 52 acres.
6. On April 28, 2023 the applicant submitted to the Borough Planning Department a Determination of No Hazard from the FAA for the proposed 6-foot-high earthen berms.
7. To meet material site standard 21.29.040(A)(1), the proposed activity must protect against lowering of water sources serving other properties by complying with required permit conditions KPB 21.29.050(A)(4), Water Source Separation; KPB 21.29.050(A)(5), Excavation in The Water Table; KPB 21.29.050(A)(6), Waterbodies.
8. The application indicates that the seasonal high-water table is 16-feet below the surface.
9. The applicant's intended depth of excavation will be 14-feet below the surface.
10. If water is encountered the applicant is required to maintain a 2-foot vertical separation from the seasonal high-water table.
11. The applicant is required not to dewater either by pumping, ditching or some other form of drainage.
12. The site plan indicates that there are no wells located within 100 feet of the proposed excavation and 1 well located within 300 feet.
13. The application states that work is not anticipated to be completed in the water table at this time.
14. The site plan states that there are no wetlands or surface waters within the proposed excavation area.
15. To meet material site standard 21.29.040(A)(2), the proposed activity must be conducted in a manner to protect against physical damage to adjacent properties by complying with the required permit conditions of KPB 21.29.050 (A)(1), Parcel Boundaries; KPB 21.29.050(A)(2), Buffer Zone; KPB 21.29.050(A)(7), Fuel Storage.
16. The site plan indicates the property boundary was flagged at visible intervals.

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17. The site plan and application propose the following buffers:  
North: 6-foot-high earthen berm.  
South: 6-foot-high earthen berm.  
East: 6-foot-high earthen berm.  
West: 6-foot-high earthen berm.  
These buffers shall not overlap an easement.
18. The applicant is required to store fuel containers larger than 50 gallons in impermeable berms and basins capable of retaining 110 percent of storage capacity. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
19. To meet material site standard 21.29.040(A)(3), the proposed activity must be conducted in a manner which minimizes the off-site movement of dust by complying with required permit condition KPB 21.29.050(10), Dust Control.
20. The applicant is required to provide dust control by the use of water and calcium chloride.
21. The site plan indicates that an access will be constructed onto Tim Ave. and the haul route will then then travel East to the Sterling Highway.
22. To meet material site standard 21.29.040(A)(4), the proposed activity must be conducted in a manner which minimizes noise disturbance to other properties by complying with required permit conditions KPB 21.29.050(2), Buffer Zone; KPB 21.29.050(3), Processing; and KPB 21.29.050(11), Hours of Operation.
23. The site plan and application propose the following buffers:  
North: 6-foot-high earthen berm.  
South: 6-foot-high earthen berm.  
East: 6-foot-high earthen berm.  
West: 6-foot-high earthen berm.  
These buffers shall not overlap an easement.
24. The applicant indicates that material processing will take place on the property. Any equipment used for conditioning or processing materials will be operated at least 300 feet from the North, East and South parcel boundaries. The applicant requests a waiver to the 300-foot processing distance on the West side of the property. Any equipment used for crushing rock or other materials will not be operated between 10:00 p.m. and 6:00 a.m., to minimize noise disturbance to other properties.
25. To meet material site standard 21.29.040(A)(5), the proposed activity must be conducted in a manner which minimizes visual impacts by complying with the permit condition KPB 21.29.050(2), Buffer Zone.
26. The site plan and application propose the following buffers:  
North: 6-foot-high earthen berm.  
South: 6-foot-high earthen berm.  
East: 6-foot-high earthen berm.  
West: 6-foot-high earthen berm.  
These buffers shall not overlap an easement.
27. To meet material site standard 21.29.040(A)(6), the proposed activity must be conducted in a manner which provides for alternate post-mining land uses by complying with the permit condition KPB 21.29.050(12).
28. The applicant has submitted a reclamation plan consistent with KPB 21.29.050(12)(a).



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29. The bonding requirement of KPB 21.29.050(12)(b) will not apply to this material site if extraction in any one year does not exceed 50,000 cubic yards of material.
30. A public hearing of the Planning Commission was held on April 10, 2023 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.

**SECTION 2.** That based on the above findings, the Planning Commission concludes as a matter of law that the application has met all the requirements of KPB 21.25 and KPB 21.29, and through imposition of the conditions under KPB 21.29.050, the Planning Commission concludes as a matter of law that the application meets the six standards found in KPB 21.29.040:

### **CONCLUSIONS OF LAW**

1. Material site standard 21.29.040(A)(1) is met because the seasonal high-water table is at an approximant depth of 16 feet, and the applicant's intended depth of excavation is 14 feet below the existing grade, as set forth in Finding 8 and 9.
2. Material site standard 21.29.040(A)(2) is met because the permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls and shall not allow buffers to cause surface water diversion too negatively impact adjacent properties.
3. Material site standard 21.29.040(A)(3) is met because the permittee will use water and calcium chloride on the driveways throughout the excavation area to minimize the movement of off-site dust.
4. Material site standard 21.29.040(A)(4) is met because site plan indicates the following noise buffers:
  - North: 6-foot-high earthen berm.
  - South: 6-foot-high earthen berm.
  - East: 6-foot-high earthen berm.
  - West: 6-foot-high earthen berm.Material site standard 21.29.040(A)(4) is also met, because any equipment used for conditioning or processing materials will be operated at least 300 feet from the North, East and South parcel boundaries. The applicant requests a waiver to the 300-foot processing distance on the West side of the property. Any equipment used for crushing rock or other materials will not be operated between 10:00 p.m. and 6:00 a.m., to minimize noise disturbance to other properties.
5. Material site standard 21.29.040(A)(5) is met because the site plan indicates the following visual screening buffers:
  - North: 6-foot-high earthen berm.
  - South: 6-foot-high earthen berm.
  - East: 6-foot-high earthen berm.
  - West: 6-foot-high earthen berm.
6. Material site standard 21.29.040(A)(6) is met because the applicant has submitted a reclamation plan consistent with KPB 21.29.050(12)(a).

**SECTION 3.** That the land use and operations are described and shall be conducted as follows:

1. A portion of KPB Tax Parcel Number 159-360-09, 10, 11, 12. The disturbed area within the parcel is approximately 52 acres;
2. Legal Description: **T 3S R 14W SEC 4 SEWARD MERIDIAN HM 2006036 HOFFMAN ACRES LOWELL FIELD PHASE 1 LOT 1, 2, 3, 4**, Homer Recording District, Third Judicial District, State of Alaska.
3. The applicant, Richard Gregoire proposes to:
  - a. Extract gravel and sand from the subject parcel;
  - b. Process materials on the subject parcel;
  - c. Reclaim the site to a stable condition upon depletion of material.

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## **PERMIT CONDITIONS**

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries as shown in the approved site plan:
  - North: 6-foot-high earthen berm.
  - South: 6-foot-high earthen berm.
  - East: 6-foot-high earthen berm.
  - West: 6-foot-high earthen berm.These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall operate all equipment which conditions or processes material at least 300 feet from the North, East and South parcel boundaries. The applicant requests a waiver to the 300-foot processing distance on the West side of the property.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
7. The permittee shall maintain a 2-foot vertical separation from the seasonal high-water table.
8. The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.
9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
10. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
11. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
12. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a material site and all original permit conditions can be met.
13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
14. The permittee shall not operate rock crushing equipment between the hours of 10:00 pm and 06:00 am.
15. The permittee shall reclaim the site as described in the reclamation plan for this parcel and approved by the planning commission.
16. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
17. The permittee shall post notice of intent on parcel corners or access, whichever is more visible if the permittee does not intend to begin operations for at least 12 months after being granted a



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conditional land use permit. Sign dimensions shall be no more than 15" by 15" and must contain the following information: the phrase "Permitted Material Site" along with the permittee's business name and a contact phone number.

18. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
19. This conditional land use permit is subject to annual review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.25.090, the planning commission may revoke a permit issued pursuant to this chapter if the permittee fails to comply with the provisions of this chapter or the conditions of the permit. The planning director shall provide at least 30 days written notice to the permittee of a revocation hearing before the planning commission.
20. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

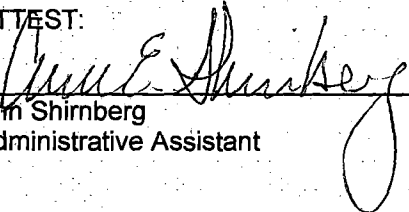
#### **Voluntary Permit Conditions**

21. The Planning commission and the Permittee have agreed to the following voluntary condition to further support Standard 21.29.040(A)(4) and has been found to be in the best interest of the Borough and surrounding property owners. The permittee shall not conduct material processing between the hours of 6:00 pm and 08:00 am.
22. The Planning commission and the Permittee have agreed to the following voluntary condition to further support Standard 21.29.040(A)(2) and has been found to be in the best interest of the Borough and surrounding property owners. The permittee shall maintain the access road while the material site is in operation.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 22<sup>ND</sup> DAY OF MAY, 2023.

  
Jeremy Brantley, Chairperson  
Planning Commission

ATTEST:

  
Ann Shirnberg  
Administrative Assistant

PLEASE RETURN  
Kenai Peninsula Borough  
Planning Department  
144 North Binkley St.  
Soldotna, AK 99669



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